

June 23, 2019

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c)*
 to Accelerate Investment in Broadband and Next-Generation Networks,
 WC Docket No. 18-141**

Dear Ms. Dortch:

WorldNet Telecommunications, Inc. (“WorldNet”) respectfully submits this ex parte letter in response to the recent ex parte comments filed by the Puerto Rico Telephone Company, Inc. (“PRTC”) in this proceeding. In that filing, PRTC contends that forbearance is appropriate for Puerto Rico because (1) telecommunications competition is thriving in Puerto Rico despite the challenging economic circumstances and (2) UNE-based and resale-based competition is completely “irrelevant” in Puerto Rico. PRTC focuses on selected points of argument, but does not consider the whole picture nor offer a thoughtful and meaningful analysis of the actual legal criteria justifying forbearance. Moreover, PRTC’s contentions, as far as they go, are stretched, incorrect, and ignore core considerations in the Commission’s required forbearance analysis, including, most notably, whether granting forbearance at this time is consistent with Puerto Rico’s public interest. When a thoughtful analysis is done applying the test for forbearance to the situation in Puerto Rico, the answer stands starkly clear: forbearance is (at least at this time) flatly wrong for Puerto Rico.

1. PRTC’s claims about competition in Puerto Rico are not true.

A. PRTC still has a dominant market presence and influence in Puerto Rico.

Telecommunications competition is not thriving in Puerto Rico as PRTC claims in its recent filing; nor is it even rivaling the levels of competition in the remainder of the country. As set forth in WorldNet’s previous filings, PRTC’s wireline market share dwarfs the average ILEC wireline market share in the remainder of the country.¹ In its recent filing, PRTC seeks to discount PRTC’s unparalleled and unduly influential market share by citing to trends of

¹ As already noted by WorldNet in previous filings, the FCC’s own subscriber data reports that, as of December 2016, PRTC provides 62% of all of the wireline voice subscriptions in Puerto Rico – a number that is 14 percentage points higher than the national ILEC average (i.e., 48%).

purported PRTC line loss and non-ILEC line gain. PRTC's contentions fall short.

As a preliminary matter, it is questionable whether this data is legally considered here. The Commission is required by law to rule on the USTelecom petition based *only on what is presented in and with the petition*, with the burden of proof falling solely on USTelecom.² PRTC's attempt to jump into a time-limited pending proceeding after the fact and retroactively supplement a petition that gives no apparent consideration to the unique circumstances in Puerto Rico would seem to be completely inappropriate and not subject to *any* consideration by the Commission in its review.³

But, even if PRTC's supplemental data and contentions were appropriately considered here, however you slice the numbers, at the end of the day, PRTC still dominates.⁴ Moreover, PRTC's analysis ignores the realities behind the naked numbers. For example, PRTC has the only ubiquitous wireline network in Puerto Rico. As a fully-owned member of the Carlos Slim/American Móvil family of companies, PRTC also has unrivaled access to capital and other resources. And, in the Uniendo a Puerto Rico Fund docket, where the Commission has committed nearly \$1 billion for the post-hurricane rebuilding of Puerto Rico's telecommunications networks, PRTC is telling the Commission that its unrivaled size, resources, and market presence are reasons for the Commission to give PRTC a right-of-first refusal to every penny of future Puerto Rico hurricane relief from the Commission.⁵ In short, whatever trends PRTC's data shows, the bottom line is that PRTC still holds control over the vast majority of the Puerto Rico market and the facilities needed to provide service within the market. For the country at large, USTelecom has attempted to paint ILECs as the "underdog" in telecommunications markets. Whatever the situation is in the rest of the country, it is painfully clear, at least on the ground in Puerto Rico, that PRTC is in no way an "underdog" in the Puerto Rico telecommunications marketplace.

B. UNE-based and resale-based competition is not "irrelevant" in Puerto Rico.

The PRTC claim that UNE-based and/or resale-based competition in Puerto Rico is "irrelevant" is also patently simplistic and false. Again, PRTC's focus on the naked number of UNE-based and/or resale-based lines in Puerto Rico utterly ignores the many other ways that UNE-based competitors, like WorldNet, have been, and continue to be, critical (1) to improving and disciplining the telecommunications marketplace in Puerto Rico, (2) to the protection of

² See 47 C.F.R. § 1.54(b)

³ In a separate, earlier filing, WorldNet notably also expressed its concerns with the Commission's proposed reliance on 2017 BDS data for Puerto Rico that pre-dated the massive hurricanes that fundamentally changed the telecommunications market and economic landscape in Puerto Rico.

⁴ As a matter of Puerto Rico law, there is a standing presumption that "the incumbent local exchange carrier has control of the market in the rendering of local telecommunications services." See 27 L.P.R.A. § 269. According to Puerto Rico law, PRTC may petition the Board to rebut this presumption in order to seek relief from various regulations. See *id.* To date, however, PRTC has not done so, leaving Puerto Rico's standing presumption of market control in full force and effect for Puerto Rico.

⁵ See, e.g., *In the Matter of The Uniendo a Puerto Rico Fund and Connect USVI Fund*, WC Docket Nos. 18-143, 10-90 & 14-58, Comments of the Puerto Rico Telephone Company, Inc. at 12 (July 26, 2018) ("no other . . . provider in Puerto Rico can combine the efficiencies, scale, scope and history of providing service to bring advanced broadband services to unserved areas throughout the island and make the Uniendo a Puerto Rico Fund a success.").

Puerto Rico consumers, and (3) to the public interest of an island that is still in the throes of an unparalleled economic crisis. These are the three elements of the Commission's required forbearance analysis, and PRTC's misleading focus on naked line counts to dismiss UNE-based and resale-based competition as "irrelevant" falls short on all three of these elements. As explained below, UNE-based competition has played, and continues to play, a valuable role in Puerto Rico – a role that far outpaces the naked line-counts that PRTC advances in its advocacy and that, as a matter of the public interest, far outweighs any purported regulatory compliance burdens for PRTC.

To begin with, in Puerto Rico, more than 3,000 government and small- and medium-sized business (that are struggling to survive in an economy that is still attempting to recover from massive hurricanes and is handcuffed by an unparalleled public fiscal crisis) have come to depend on the innovative and tailored telecommunications services that *WorldNet* has given them through the use of UNEs and resale. So, for these more than 3,000 customers, competitive companies using UNEs are far from "irrelevant." For the foreseeable future, these businesses want and need *stability*, not the added weight of price increases (acknowledged in the USTelecom petition) and forced transitions to services and service providers that they do not necessarily want or need and by definition were not their first choice.⁶ PRTC is quick to write these thousands of government and business customers off as completely "irrelevant" and an insignificant, shrinking market. They are not. They are the life-blood and hope of an already-struggling economic recovery effort in Puerto Rico that, just recently, has been challenged further by both threatened and actual Commonwealth lawsuits aimed at clawing back years of payments from hundreds of government contractors as part of its bankruptcy proceedings, with many of the government contractors being small- and medium-sized Puerto Rico businesses that must now add the burden of addressing these Commonwealth claims to the list of continuing burdens that they now face in today's Puerto Rico economy.⁷ Yes, these businesses can

⁶ See, e.g., Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141, Ex Parte Letter of WorldNet Telecommunications at Attachment A (filed Oct. 19, 2018) (providing WorldNet customer testimonials stating that "WorldNet is the telecommunications provider in Puerto Rico that offered the most value during the evaluation process, by better adjusting to our economic and service needs. In the current economic conditions, WorldNet had no doubt about adjusting to Adecco's ways of doing business . . . For us to have healthy competition and personalized service, there needs to be local competitors. Any change to the telecommunications industry has to consider the impact on small and medium sized companies. There are few solid companies left after a natural catastrophe like the one we face last year. WorldNet is a key provider that complies with the telecommunications needs of Adecco" and that "[t]he support and benefits we have received from WorldNet has been key in the development of our business. You are a local company that understands our culture and needs. You should not be facing limits that might stop you from providing services to clients who are satisfied with what you have delivered to this day" and that "[c]ompanies as ours keep many backup and redundancy services; with less telecommunications providers prices would go up and we would be forced to eliminate some of these services, which are very important for the continuity of our company . . . After examining the best options in telecommunications services for our business, we have determined that WorldNet is the best option as a service provider.").

⁷ The PROMESA Oversight Board filed in response to a May 2 deadline over 200 adversary proceedings against government vendors and contractors, and has sent other vendors and suppliers "tolling agreements" that would avoid being named in a lawsuit and said it entered into such accords with "several dozens" of suppliers. These appear to include vendors in Puerto Rico having nothing to do with major financiers or bondholders. All these actions seek to avoid, among others, purported preference payments made to the vendor or suppliers as far back as four (4) years. At best, this is a costly distraction of resources for these business, an

ultimately benefit from the advances of next generation technologies. But, there is no indication in Puerto Rico right now that forbearance will somehow open the floodgates of additional investments in these technologies to come anywhere near offsetting the burdens that forbearance will inherently create for an already fragile Puerto Rico economy. At this point, many small and medium sized business simply cannot afford to pay higher prices for telecommunications and data services. The market upheaval that forbearance would cause in Puerto Rico right now, quite plainly, is not in the public interest.⁸

Moreover, PRTC's naked focus on UNE and resale line counts belies the fundamental and necessary role that WorldNet has played, and continues to play, in the improvement and safeguarding of the Puerto Rico telecommunications market and in the protection of Puerto Rico consumers. As WorldNet has already documented in previous filings, WorldNet is the only provider in Puerto Rico that has taken PRTC to task to improve service quality. WorldNet is effectively the only provider in Puerto Rico to consistently call PRTC out on its anti-competitive and unlawful practices. WorldNet is also one of the leading market innovators in Puerto Rico, using UNEs as a platform to support new technologies (like cloud computing) over existing infrastructures and to build and connect next generation infrastructures at the pace and to the extent that the Puerto Rico market dictates, not based on timing or terms devised in a mainland conference room without specific regard to Puerto Rico.⁹ PRTC likes to spin WorldNet's efforts and impact as undue litigiousness and troublemaking, but the simple fact of the matter is that the Puerto Rico telecommunications market and Puerto Rico consumers would be far worse off if UNE and resale competition did not exist and was not fostering mechanisms and incentives for wholesalers to help discipline a supplier like PRTC. Unlike any other provider in Puerto Rico, WorldNet has fought tooth and nail for service quality performance standards and actual accountability for an ILEC that has actively fought to keep competition out of Puerto Rico and to keep Puerto Rico well behind its mainland counterparts in service quality.¹⁰ In short, PRTC's focus in this proceeding on the naked number of UNE lines and competitors in Puerto Rico completely belies (to a much greater degree than anywhere else in the country) their continuing importance to stabilizing and improving Puerto Rico's economic and communications future. UNE and resale obligations have been, and will continue to be, necessary (1) to protect and advance the telecommunications marketplace in Puerto Rico and (2) to protect Puerto Rico consumers.

2. Forbearance does not make sense for Puerto Rico right now.

WorldNet understands the Commission's interest in streamlining its regulations through

indeterminate number of whom may have done nothing wrong but have simply gotten caught in a widely cast net.

⁸ These and other points are detailed and supported in the Declaration of David Bogaty, WorldNet's founder and Chairman of the Board, attached as Attachment A hereto.

⁹ It is noteworthy that PRTC has, unlike other ILECs, has never made an independent filing on forbearance, nor is it even a member of the organization (US Telecom) that has made such filing. Liberty Cable of Puerto Rico has made a thorough and un rebutted filing that as a matter of law, this alone bars the relief requested by PRTC in Puerto Rico.

¹⁰ As explained in previous filings, PRTC has made sure that the unfortunate price of UNE and resale competition in Puerto Rico has been litigation. To a very large extent, therefore, it has been PRTC tactics, not proper market forces, that have left the competitive UNE and resale market where it is today.

forbearance and other measures. WorldNet does not understand, however, how forbearance from UNE and resale obligations makes any rational sense for Puerto Rico right now. Whatever numbers the Commission uses (and however one can slice them), forbearance would invariably serve to give additional market power to a provider (i.e., PRTC) with a market share that dwarfs all other Puerto Rico providers and, indeed, probably exceeds the market share of all of its other competitors combined. Forbearance would serve to give regulatory relief to a provider with documented challenges in service quality,¹¹ aggressive opposition to efforts to improve service quality,¹² and tactics that have stunted the development of UNE and resale competition and, in some cases, been met with documented, formal sanction.¹³ Forbearance would serve to force thousands of Puerto Rico small- and medium-sized businesses to an unwanted transition of

¹¹ See, e.g., In re Applications of Verizon Communications, Inc. and America Movil, S.A. for Consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214 and 310(d) of the Communications Act, WCB Docket No. 06-113, Petition to Deny of the Telecommunications Regulatory Board of Puerto Rico (filed July 14, 2006) (urging the Commission to condition the approval of the America Movil takeover of PRTC with an obligation to comply with detailed performance standards designed to raise PRTC's quality of service to that enjoyed by mainland consumers). Ultimately, the Commission determined, instead, to require a \$1 billion commitment from PRTC to improve its performance. WorldNet is unaware of any concrete evidence that such commitment was honored.

¹² See, e.g., In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Waiver Petition of the Telecommunications Regulatory Board of Puerto Rico for Enterprise Market Switching Impairment in Defined Puerto Rico Markets, CC Docket No. 01-338, p. 21-23 (filed Dec. 30, 2003) ("TRB Waiver Petition") (noting "a track record of PRTC wholesale service failures . . . include[ing] instances where even after two to four years of experience and opportunity, PRTC has failed to devote the resources or attention necessary to provide even the most basic services and facilities without substantial operational problems" and "a consistent track record of being unprepared, uninterested, and incapable of providing wholesale services as and when required or promised."); Petition of WorldNet Telecommunications, Inc., Case No. JRT-2003-AR-0001, Order at 6-8 (J.R.T.P.R. June 18, 2008) (documenting a history in which the Board was forced, over PRTC objections (which PRTC litigated all the way to the 1st Circuit) to require improved performance standards for PRTC in an interconnection agreement with WorldNet based on "PRTC's record of poor performance and failure to improve service to competitive carriers," and then forced, in the subsequent interconnection agreement with WorldNet and, again, over PRTC objections (which PRTC again litigated all the way to the 1st Circuit), to establish liquidated damages as a mechanism to enforce those standards – "[i]t is certainly reasonable that, when an incumbent telecommunications carrier frustrates competition by repeated breaches of an interconnection agreement or adopts a business policy of paying fines and damages as the price of keeping a competitor out of the market, a state commission might conclude that the goals of the Act could only be achieved by the imposition of punitive liquidated damages.").

¹³ See e.g., Puerto Rico Telephone Co. Inc. v. WorldNet Telecommunications, Inc., Civ. No. 14-1062 (SCC), Opinion and Order at 39 (D. Puerto Rico 2014) (confirming an arbitration award rendered in WorldNet's favor and requiring PRTC to pay WorldNet's attorneys' fees by finding that "Rule 44.1(d) of Puerto Rico's Rules of Civil Procedure require the imposition of fees against a party 'has acted obstinately or frivolously' . . . Here, as noted above, I find that PRTC has been obstinate: it has repeated losing arguments . . . despite having previously lost on the same issues in two other fora. Those arguments were, moreover, largely frivolous and involved misconstruing the record of the arbitration. And the claims that PRTC made to this court were ones it had waived on multiple grounds. As such, I conclude that PRTC's primary purpose in filing its motion to vacate the Final Award was further delaying WorldNet's recovery. I therefore find that attorneys' fees and costs are warranted."); WorldNet Telecommunications, Inc. v. Puerto Rico Telephone Co. Inc., Case No. 50 494 T 00355 12, Final Award (Int'l Ctr for Dispute Resolution 10/24/13) (rejecting PRTC's attempt to charge tariff rates for UNEs and ordering the payment of damages and all arbitration costs); WorldNet Telecommunications, Inc. and Puerto Rico Telephone Co. Inc., Case No. JRT-INT-0036 (DS1-DS3), Order Granting Motion for Order to Provision DS1 and DS3 Orders (J.R.T.P.R. Aug. 1, 2012) (granting WorldNet's request for emergency relief by finding that PRTC was violating the parties' interconnection agreement and federal and Puerto Rico law by rejecting WorldNet DS1 and DS3 UNE orders).

services and providers (with, at least for a time, increased service prices) in the middle of a historic and unparalleled economic crisis. Forbearance would serve to force providers like WorldNet, already distracted by hurricane-related repair and hardening efforts, into either rushed, wholesale network overhauls or leaving the market – hamstringing and/or removing the very providers that have been the leading agents for service quality improvements and challenging PRTC’s anticompetitive and anti-consumer tactics over the years. And, all of this for the blind promise of increased fiber deployment by an ILEC (i.e., PRTC) that despite access to unrivaled capital and resources, has, to date, issued only a single notice of copper retirement.

As applied to Puerto Rico, the current forbearance request is clearly not warranted under the Commission’s required three-part test because it would cause material and irreparable damage to the telecommunications marketplace, Puerto Rico consumers, and the public interest that far outweighs any continuing regulatory compliance burden for PRTC or is even remotely justified by the inherently dubious PRTC promise of increased fiber deployment. Puerto Rico is struggling with economic issues that no other US jurisdiction faces and is still recovering from the devastation of historic hurricanes. Whatever assumed benefits there may be to eliminating UNE and resale competition, it is hard to believe that they will come close to outweighing the burdens and disruptions that forbearance will create for Puerto Rico in its current condition. Indeed, if UNE and resale competition is currently small and disappearing on its own (as PRTC and other ILECs contend), there is really no basis for the urgency of, or pressing need for, the forbearance that USTelecom has requested – especially in Puerto Rico. And if, sometime in the future, conditions have truly and materially changed for the better in Puerto Rico, there would be nothing stopping PRTC from initiating at such future time its own (properly filed) forbearance petition, which could be appropriately measured on the merits at that time.

The current forbearance request should not be granted as to Puerto Rico or, at a minimum, should be delayed significantly to account for Puerto Rico’s current economic struggles.

Respectfully submitted,

/s/ Richard Davis

Richard Davis

Outside Counsel

WorldNet Telecommunications, Inc.

ATTACHMENT A

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Petition of USTelecom for Forbearance)	WC Docket No. 18-141
Pursuant to 47 U.S.C. § 160(c) to)	
Accelerate Investment in Broadband)	
and Next-Generation Networks)	

DECLARATION OF DAVID BOGATY

1. My name is David Bogaty. I am the founder and Chairman of the Board of WorldNet Telecommunications, Inc. (“WorldNet”).

2. I am providing this declaration in response to the claims of the Puerto Rico Telephone Company, Inc. (“PRTC”) that UNE and resale competition in Puerto Rico is “irrelevant” and that forbearance from UNE and resale obligations will not have any materially adverse impact on Puerto Rico.

3. In my experience, UNE and resale competition has played, and continues to play, a very important role in Puerto Rico and forbearance from these obligations will have a materially negative impact on Puerto Rico, especially in these extraordinarily challenging economic times.

4. WorldNet does not operate on the same scale as companies like PRTC. But, through UNEs and resale, WorldNet has been able to provide tailored, flexible, and innovative services to small- and medium-sized business customers.

5. As some of these customers have shared in letter testimonials that WorldNet has shared in this proceeding, many of the services that WorldNet provides via UNEs and resale are exactly what small- and medium-sized Puerto Rico business want. In my experience, in the current economic climate of Puerto Rico, many Puerto Rico businesses do not need and are not

looking for the extraordinary bandwidth and speeds of fiber-based technologies. They are looking for right-sized, functional, reliable, and affordable telecommunications services – services that WorldNet has been able to provide and tailor to this demand by using UNE and resale. Moreover, with the recurring threat of hurricanes, some Puerto Rico customers, like hospitals and other emergency service providers, specifically want copper-based services so that their services still function during power outages. And, for other Puerto Rico customers, especially in rural areas, copper-based services are their only realistic option.

6. This is not to say that all Puerto Rico business are not looking for the service capabilities only offered through fiber-based technologies. Some are, and, in those cases, WorldNet is actively looking to leverage its UNE and resale customer base to invest in and extend those technologies where appropriate demand exists. Without UNEs and resale, however, such investments would be a much more difficult undertaking for us.

7. Overall, in my experience, there has been, and continues to be, a very real and important market demand and place in Puerto Rico for the services that WorldNet provides using UNEs and resale. WorldNet has actively tried to secure its service to this market by inviting PRTC to propose, and, actively proposing to PRTC, commercial arrangements for WorldNet's continuing access to the facilities that WorldNet is now using as UNEs and for resale. PRTC has rebuffed these efforts, summarily refusing WorldNet's proposals and declining to make its own offer of commercial terms for these facilities.

8. In light of all of this, it is my sincere belief that, by eliminating UNEs and resale in Puerto Rico, the Commission would be irreparably harming Puerto Rico businesses that are critical to Puerto Rico's efforts to both recover from the 2017 hurricanes and to climb out of the historically bad economic conditions that now exist in Puerto Rico.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my information and belief.

/s/ David Bogaty
David Bogaty

June 23, 2019